
FINAL RECOMMENDATIONS FOR THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS (DEPARTMENT)

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION?) Should the licensing and regulation of all branches of engineering and land surveying be continued?

Recommendation #1: *Given the health and safety implications for consumers, the Joint Committee and the Department recommends that the practice areas of civil, electrical and mechanical engineering and land surveying should continue to be regulated. However, other areas of engineering should be regulated only if there is clear potential for consumer harm.*

Comments: There is a substantial risk of physical harm to the public from faulty engineering and land surveying work. The need to regulate certain branches of engineering in California is particularly evident because natural disasters such as earthquakes and floods are prevalent.

ISSUE #2. (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: *The Joint Committee and the Department recommends that the Board's sunset date should be extended for only two years, to July 1, 2003, because of major unresolved issues dealing with the Board's regulatory authority.*

Comments: This is the only board in this round of sunset review to receive a recommendation for a shortened renewal period. Major unresolved issues dealing with the Board's regulatory authority, such as the need to continue regulation of engineering subspecialties and the scope of practice for the three main branches of engineering, indicate that the Board needs additional legislative oversight.

ISSUE #3. (SHOULD THE DEPARTMENT CONDUCT AN INDEPENDENT REVIEW OF TITLE ACT REGULATION?) There is still a need to conduct a more comprehensive analysis of whether certain title acts for specified branches of engineering should be eliminated or converted to practice acts similar to civil, electrical and mechanical engineering, and whether supplemental engineering work should be permitted in other branches of engineering.

Recommendation #3: *The Joint Committee and the Department recommends that the Department should be responsible for reviewing title act registration. There should be a Board-funded contract with an independent consulting firm to perform an objective analysis of title act registration. Additionally, the analysis should consider the extent to which supplemental engineering work should be permitted for all branches of engineering.*

Comments: Various attempts by the Board and the Legislature to review the need for regulation of engineering subspecialties have not been successful. The initial sunset review of the Board recommended that it conduct a thorough analysis of the title act system. This resulted in the elimination of only three out of thirteen title acts (corrosion, quality, and safety). Attempts at eliminating regulation of traffic engineers failed due in part to the Legislature's acceptance of the argument that deregulation could endanger highway safety.

Both the Joint Committee and the Department have consistently recommended that the Board conduct a more thorough analysis of the remaining title acts that potentially could be eliminated and *clearly demonstrate why a title act should be continued*. However, the Board has not fully responded to this recommendation and failed to consider some of the recommended criteria for evaluating the ten remaining title act disciplines. Because of the controversy over deregulation, the Department anticipates that the remaining title acts will stand for the next two years. In the interim, the Department has recommended that it be responsible for reviewing title act registration.

Another issue unresolved, is the extent to which supplemental engineering work should be permitted for all branches of engineering. Standard industry practices allow for overlapping engineering work on any given project. However, the Board only allows civil engineers to perform overlapping or supplemental work from other branches of engineering. Specifically, existing law allows civil engineers to perform supplemental work provided that the work is incidental to or in conjunction with civil engineering work. There is no similar law for other branches of engineering. The result is inequitable treatment of other branches of engineering and inconsistent interpretations of overlap of scope of practice between similar or related engineering disciplines.

[The Board agrees to hire a consultant to perform an in-depth analysis of the title acts, specifically focusing on which ones should be deregulated and which ones should become practice acts. The Board continues to believe strongly that the current method of only restricting title but not the practice does little, if anything, to protect the citizens of California.]

ISSUE #4. (SPECIFICALLY DEFINE ELECTRICAL AND MECHANICAL ENGINEERING IN STATUTE?) The ability of the Board to define the scope of practice for areas of electrical and mechanical engineering is unique and has possibly created more controversy for the Board than any other regulatory power it has. Only the Legislature generally has authority to delineate scope of practice for licensed professions.

Recommendation #4: *To eliminate confusion over the scope of practice for the two main branches of electrical and mechanical engineering, the Joint Committee and the Department recommends that the regulatory definitions of electrical and mechanical engineering should be established in statute.*

Comments: Generally, a specific scope of practice for regulated professions is delineated in statute. However, this Board's statutory definitions for electrical and mechanical engineering are very general and problematic. Specific definitions should be included in statute.

[The Board recently agreed to sponsor legislation to move the definitions of electrical and mechanical engineering from regulation into statute, as recommended by the Joint Committee and the Department. They also scheduled public hearings to review the current definitions.]

ISSUE #5. (SHOULD THE BOARD ADOPT A CODE OF PROFESSIONAL CONDUCT?)

This Board has not, as yet, adopted a code of professional conduct for the engineering profession. There has been criticism of the Board for not pursuing these professional standards for the practice of engineering. There are currently a number of states that have adopted professional standards of practice for engineers, and the National Council of Examiners and Engineers and Surveyors (NCEES) has recommended adoption of model standards. All other design and construction boards under the Department also utilize a code of professional conduct.

Recommendation #5: The Joint Committee and the Department recommends that the Board should seek statutory authority to adopt a professional code of conduct and ethics for the practice of engineering.

Comments: Almost all the boards under the Department, particularly those governing the design and construction industries, utilize a code of professional conduct as a basis for disciplining licensees. However, this Board has not adopted a code of professional conduct. Codes of professional conduct allow licensing boards to take disciplinary action against their licensees for fraud, deceit, misrepresentation, negligence, incompetence, breach of contract, and aiding/abetting another to violate the law. Specifically, this authority has proven to be an effective tool against false advertising and illegal contracting practices. Therefore, the Department concurs with the Joint Committee recommendation that the Board should seek statutory authority to adopt a code of professional conduct.

[The Board recently indicated that it has introduced legislation to adopt a code of professional conduct.]

ISSUE #6. (SHOULD THE BOARD CEASE PROMULGATING “POLICY

RESOLUTIONS?”) The Board practice of issuing policy resolutions as a method of clarifying existing statutes, regulations, and procedures appears to be legally indefensible. Specifically, these policy resolutions have been considered as “underground” regulations. The Attorney General has advised, that if a board needs to clarify any part of applicable law, it should do so only through regulations.

Recommendation #6: The Joint Committee and the Department recommends that all policy resolutions or other proposals by the Board relating to any aspect of its licensing authority should be codified either as regulations or statutes. This will ensure the Board is not exceeding its authority and bring it into conformity with the practices of other boards.

Comments: The Board practice of issuing policy resolutions as a method of clarifying existing statutes, regulations, and procedures appears to be a violation of law. A 1996 California State Supreme Court decision limits agencies from issuing opinions or procedures without adopting them as regulations. Specifically, these policy resolutions are considered “underground” regulations (regulations adopted without the benefit of the rulemaking process and public comment required by the Administrative Procedures Act). In response, the Board withdrew some of its policy resolutions but several remain in question. As the Joint Committee has noted, it is not clear whether the Board still plans to use policy resolutions to interpret its authorizing statutes and provide opinions concerning areas of practice. However, given a May 1999 Attorney General opinion strongly suggesting that the Board curtail the use of policy resolutions, it is clear that the Board should cease this practice.

[The Board recently indicated that it voted to withdraw all remaining policy resolutions, and that most could be addressed through the regulatory process should the Board determine that the specific issue still needs to be addressed.]

ISSUE #7. (SHOULD THERE BE A WRITTEN CONTRACT REQUIREMENT FOR ENGINEERING SERVICES?) Unlike other design and building trades regulated by the Department, such as architects, home improvement contractors, and landscape architects, there is no written contract requirement for licensed engineers. [The Board recently introduced legislation to adopt a written contract requirement.]

Recommendation #7: *The Joint Committee and the Department supports the Board's efforts to pursue legislation to adopt a written contract requirement for engineers.*

Comments: Engineering is one of a very few professions that does not require written contracts for the performance of services. Written contracts are an effective legal tool for protecting all parties in complex transactions of a technical nature. All other design and building professionals regulated by the Department, such as architects, home improvement contractors, and landscape architects, have written contract requirements. Written contracts would enhance protection of consumers of engineering services by ensuring fair contracting and billing practices. They also protect engineers by ensuring that both parties understand the essential terms of a professional contract, and by enabling them to enforce an engineer's lien when necessary. Accordingly, the Department supports the Board's efforts to pursue legislation to adopt a written contract requirement for engineers.

ISSUE #8 (ARE THERE CHANGES NECESSARY TO UPDATE THE BOARD'S LICENSING ACT?) Although the Board was unable to generate support for its legislation to rewrite the entire Professional Engineers' Act, there may still be some changes which should be made to either clarify or update this licensing act, and that are non-controversial. (The Board recently indicated that it has introduced legislation to make "clean-up" amendments to the Professional Engineers Act and the Professional Land Surveyors' Act.)

Recommendation #8: *The Joint Committee recommends that the Board should pursue legislation to make "clean up" amendments to the Professional Engineers Act and the Professional Land Surveyors' Act which are non-controversial..*

Comments: In 1997, the Board introduced legislation to rewrite its entire Professional Engineers' Act. The Board, however, was unable to generate any significant support from either the Legislature or the Administration for its proposal. One of the reasons given for the failure of this measure was a lack of understanding and confusion about what the Board was trying to accomplish by rewriting the entire Professional Engineers Act. The measure was seen as too limiting and restrictive on the current practice of engineering in this State. Although the Board claimed that this new licensing scheme would have cleared up the confusion and problems with the current Engineer's Act, insufficient evidence was provided to demonstrate that this would be accomplished. There were, however, changes being made to the Act which were non-controversial and both clarified and updated provisions within the Act. Since the Board dropped the entire proposal, these non-controversial changes have not been pursued.

[The Board has indicated that it will be pursuing legislation to make a number of "clean up" amendments to the Professional Engineers Act and the Professional Land Surveyors Act.]

ISSUE #9. (SHOULD THE BOARD ELIMINATE CERTAIN STATE-ONLY EXAMS?)

It appears as if the Board may be able to provide national examinations for those who wish to practice structural engineering or land surveying, rather than requiring the current state-only examinations. This would improve state reciprocity for engineers who practice in these areas.

Recommendation #9: *The Joint Committee recommends that a sunset date of December 31, 2004 should be placed on these two state-only examinations allowing the Board sufficient opportunity to transition to using the national examinations. Any state-specific examinations in structural engineering or land surveying should only pertain to the laws, regulations and practice which is unique to California, they should not duplicate areas of testing provided for in the national examinations.*

Comments: During the review of this Board in 1996, the Joint Committee questioned whether the Board still needed to provide two state-only examinations. They included the “Structural Engineers” examination and the “Land Surveyors” examination.

California Structural Engineering Examination. For a civil engineer to use the title “structural” engineer, they must pass the state Structural (Civil) examination. NCEES also provides a national examination for structural engineers. The Joint Committee questioned why the national exam, which would provide for better comity for out-of-state structural engineers, could not be used.

[The Board has reviewed this issue and recently voted to transition to using the NCEES Structural II national examination in conjunction with an 8-hour state-specific examination.]

California Professional Land Surveyors Examination. The Board administers its own examination to land surveyor candidates. Recently the pass rates on this exam have plummeted to 15% in 1993, 8% in 1995, **1.9%** in 1998, and 14.4% in 1999. The NCEES also provides a national examination for land surveyor candidates. In 1998, the pass rate for the national examination was **67.2%**. The Joint Committee questioned once again why the national exam could not be used, which would provide for better comity for out-of-state land surveyors and at least improve the pass rate for land surveyor candidates. Also, 52 member boards of the NCEES use the national land surveying examination.

[The Board has reviewed this issue and recently voted to hire a consultant to compare the national examination with the California examination and to make a recommendation whether or not the Board should use the national examination in conjunction with a state-specific examination while maintaining the appropriate level of consumer protection. The Board hopes to implement the use of the NCEES professional land surveying examination in conjunction with a state-specific examination by the April 2001 examination administration.]

ISSUE #10. (NEED FOR OCCUPATIONAL ANALYSES OF BOARD’S EXAMS?)

Not all examinations provided by the Board have had an occupational analyses performed on them within the past five years as recommended by the Department.

Recommendation #10: *The Joint Committee recommends that the Board should assure that all state and national examinations provided by the Board have had an occupational analysis performed on them within the past five years. If they have not, then the Board should immediately implement a schedule for performing a new occupational analysis to meet current legal requirements.*

Comments: Occupational analyses and exam validations are critical components of appropriate and legally defensible licensure programs. Both types of reviews help the state ensure that the standards for entry into professions are consistent with the skills required in those professions. A recent court decision held that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of “job-relatedness.” The court also indicated, that if a licensing examination has not been updated and validated within five years it may not be legally defensible. The Department has also adopted recent policy guidelines so that boards may implement minimum standards requirements for updating and validating their licensing examinations. It was unknown at the time of the November hearing, whether all of the examinations provided by the Board are meeting this requirement. And if not, what plans the Board has to update their examinations with an occupational analysis. [The Board has provided a schedule for occupational analysis and test plan update of all examinations provided by both the Board and NCEES. It appears as if all examination will meet the five-year standard.]

ISSUE #11. (SHOULD THE BOARD SEEK A FEE INCREASE?) The Board is projected to have a budget deficit by fiscal year 2001/02. Should application, examination and licensee fees be increased to deal with the Board’s projected budget deficit?

Recommendation #11: *The Joint Committee recommends that the Board should provide appropriate justification for any fee increases to the Department and the Legislature, and assure that the Board has considered all other alternatives to deal with its projected budget deficit. If considered appropriate, then any changes to the fee structure, or increases in fees, should be included in sunset legislation.*

Comments: As indicated by the Board, it has considered a number of options to resolve its projected fund deficit. As part of a spending reduction plan, the Board curtailed expenditures in fiscal year 1998/99 and projected an approximate savings of \$200,000 per fiscal year thereafter. The Board is now proposing to restructure its fee system, increase both renewal and application/examination fees and change from a quadrennial renewal cycle to a biennial renewal cycle (similar to other boards). These changes should bring the Board’s fund reserve up to a solvent level.

ISSUE #12. (CHANGE COMPOSITION OR REQUIREMENTS FOR MEMBERSHIP ON THE BOARD?) There has been some concern raised that the current professional membership of the board does not adequately represent the engineering profession. That in the past there has been little representation of engineers who work in the public sector.

Recommendation #12: *The Joint Committee recommends that one of the licensed professional engineers of the Board be from a local public agency and another from a state agency.*

Comments: There are total of 13-members for this Board. There are 7 public members and 6 professional members. The professional members include five licensed professional engineers and one licensed land surveyor. Of the five licensed professional engineers, one must be civil engineer, one an electrical engineer, one a mechanical engineer, one a structural engineer, and one from one of the remaining branches of engineering. Over the years, there has been criticism that the Board has been dominated by those professional engineers who work in the private sector and generally work for engineering firms, and that there was little if any representation for a large number of licensed engineers who work for local or state agencies.